

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1527 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BAKULBHAI DOSHI

Versus

YOGESH KANHAIYALAL DAVE

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Appearance:

1. Criminal Misc.Application No. 1527 of 2001

MR RD DAVE for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

MR AJ DESAI LD.ADDL.PUBLIC PROSECUTOR for Respondent No. 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/05/2002

JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure Code, 1973, for quashing Criminal Complaint No.1/1997 filed before the Labour Court at

Rajkot by respondent No.1 herein against the petitioner and one Chandrakantbhai Pavagadhi - Chairman of Rajkot Nagrik Sahakari bank Ltd., under Section 106 of the Bombay Industrial Relations Act, 1946.

#. In the said complaint the contesting respondent has stated that the Labour Court had granted reinstatement with continuity of service and 40% of backwages to the contesting respondent. That, being aggrieved by the said order of the Labour Court, the Co-operative Bank had preferred an appeal under Section 84 of the Bombay Industrial Relations Act, 1946, unsuccessfully. That, therefore, it is proved by the order of the Labour Court as well as by the order of the Industrial Court in appeal that there was an illegal change and, therefore, the present petitioner is required to be punished under Section 106 (1) of the Bombay Industrial Relations Act, 1946, (for short "the Act"). It is also alleged in the complaint that the Bank and its officers have violated the provisions of Section 47 of the said Act by not paying the wages awarded by the Labour Court and, therefore, they are also required to be punished under Section 106(2) of the said Act. It is further alleged in the complaint that the present petitioner has been continuously committing the offence by not taking the contesting respondent in service in accordance with the order of the Labour Court and, therefore, according to the case of the contesting respondent the petitioner herein be dealt with and be punished accordingly.

#. The present petitioner is shown as respondent in the said complaint and the present petitioner has come out with a case that no offence is made out and, therefore, the complaint is required to be quashed and set aside. It is also contended that the present petitioner has filed appropriate petition before this Court challenging the said order of the Labour Court confirmed by the Industrial Court. It is also contended by the petitioner that the contesting respondent was given work as and when it was available. It is also contended that when the work would not be available it could not be given to the contesting respondent. That even the Labour Court has also considered this aspect while passing the order in question. It is further contended that so far as back wages are concerned, the order with respect to the payment of the wages has been stayed by this Court and, therefore, the petitioner cannot be said to have committed any offence. It is, therefore, contended that the complaint is required to be quashed and set aside. The petitioner has, therefore, prayed for quashing the complaint under Section 482 of the said Code.

#. Notice was issued at the first instance and rule was issued thereafter. In response to the service of notice of rule, Mr.T.R.Mishra has appeared on behalf of the contesting respondent. Mr. A.J.Desai, learned APP appears for the State of Gujarat. I have heard the learned advocates for the parties and have perused the papers.

#. It is not much in dispute that the contesting respondent had filed a case before the Labour Court at Rajkot being BIR No.44/1992 against the Rajkot Nagrik Sahakari Bank Ltd. The said matter was disposed of by the said Court on 8.10.1986. The Labour Court was pleased to hold in the said order that the order of the respondent - Bank terminating the service of the contesting respondent with effect from 18.5.1992 is illegal. The Labour Court further directed that the said Bank shall reinstate the contesting respondent from the date of termination with 40% backwages.

#. The said Bank preferred an appeal being Appeal - ICR No.3/1996 before the Industrial Court at Rajkot. The said Court heard the parties and dismissed the said appeal of the said Bank by judgment and order dated 27.12.1996. These facts are not in dispute.

#. It is further contended by the learned advocate for the petitioner that the petitioner herein has preferred Special Civil Application and there is no dispute that this Court has granted interim stay against the payment of backwages. Therefore, the payment of backwages is not at dispute in this matter also.

#. The contention is that, according to the case of the contesting respondent, he was required to be reinstated with seniority and that order has not been complied with by the petitioner and, therefore, the petitioner has committed the aforesaid offence and, therefore, he should be punished accordingly. According to the case of the present petitioner, so far as reinstatement is concerned, it has been clearly observed that the petitioner would get work as and when the work would be available. It is also contended by the petitioner that the said respondent was appointed to work when work was available. However, when work is not available the respondent cannot be taken up in service for doing no work. It is, therefore, contended that no offence has therefore be committed by the petitioner and, therefore, the complaint is required to be quashed.

#. In order to appreciate the aforesaid position we have to consider the observation of the Labour Court as well as of the Industrial Court. In para-11 of the judgment of the Industrial Court the learned Member of the said Court has observed that having regard to the facts and circumstances of the case, it is found that the Co-operative Bank has appointed some persons to do some urgent work in absence of regularly appointed employees and thereby the said bank has appointed such persons on ad-hock basis or casual basis against the administrative rules of the Bank and the said act is clearly illegal. It is further observed in the said judgment that though the Labour Court has directed the reinstatement of the contesting respondent, yet the said order does not confer any status of permanency on the contesting respondent. It is also observed that as per the order of the Labour Court, the contesting respondent has been reinstated on his original position where he was working in the post. Even while rejecting the prayer for stay order, the learned Member of the Industrial Court has observed that there is no question of granting stay order since there was no question of permanent appointment of the contesting respondent in the said Bank and there is no question of extending permanency benefit to him as per the order of the Labour Court and, therefore, the petitioner has to be given work according to seniority and in accordance with the work which he was getting before termination and, therefore, the said prayer was rejected.

##. On the basis of the said observation in para-11 of the said judgment of the Industrial Court at Rajkot dated 27.12.1996 the learned advocate for the petitioner has argued that since the petitioner is not ordered to be reinstated on a permanent basis and since he is being given work as and when the work is available, it cannot be said that some offence has been committed by the petitioner and, therefore, the complaint is required to be quashed.

##. Again this would be a matter of dispute between the parties on the point if whether the work at a particular time was available or not or whether on availability of work, it was given or offered to the contesting respondent or not, there would all be disputed questions of fact. Similarly, whether there is breach of order of the Labour Court or of the Industrial Court, would also be a question of fact which can be dealt with and decided by the said court after the material is placed before it. I am of the opinion that this is too early to decide the said issue on the averments made in the application by

this Court. Therefore, the complaint cannot be quashed on this count at this preliminary stage.

##. Another argument advanced by the learned advocate for the petitioner is that there is no change made by the Bank against the standing order of the Bank and, therefore, no offence can be said to have been made out against the petitioner. So far the observation of the Industrial Court is concerned again we may refer to the observation made in para-11 of the judgment of the Industrial court. There it has been mentioned that the Rajkot Nagrik Sahakari bank Ltd., has made appointment on ad-hock or casual basis with a view to cope up with the work on account of absence of permanent employees. It is not much in dispute that the said Bank could not make such appointment on ad-hock basis also, yet the appointments have been made as per the aforesaid observation in para-11 of the said judgment. It, therefore, cannot be said that even this offence has not been made out prima facie. Therefore, it appears from the record that some disputed questions of fact are in picture, which cannot be dealt with and decided by this Court while considering an application for quashing a complaint under Section 482 of the said Act. This Court can consider whether on a bare reading of the complaint some offence has been prima facie made out. If the answer is in the affirmative then the complaint cannot be quashed and set aside.

##. On the other hand, if on a bare reading of the complaint no offence is made out then the complaint can be certainly quashed. In the present case as stated above, some factual aspect have been involved apparently on the face of the record and such disputed questions of facts cannot be decided by this Court in exercise of the powers under Section 482 of the said Code.

##. Under Section 106 of the said Act, 1946, any employer, who makes an illegal change can be punished with fine which may extend to Rs.5,000/-. As said above, by making appointment contrary to the standing order the Co-operative Bank in question is said to have committed illegal change and thereby the Bank is said to have committed an offence punishable under Section 106 of the said Act. As above said appointment contrary to the standing order becomes an illegal change within the meaning of Section 106 of the said Act. As has been defined in Clause-15 of Section-3 of the said Act, 1946.

##. As per the arguments advanced by the learned advocate for the contesting respondent, the petitioner

herein is guilty of illegal change within the meaning of Sub Section-15 of Section-3 read with Section 46 of the said Act, 1946. Having regard to the aforesaid observation in para-11 of the judgment of the Industrial Code referred hereinabove it cannot be said that no offence has been made out even prima facie and, therefore, this is not a fit case wherein the complaint should be quashed at this initial stage.

##. On the other hand, if the parties are allowed to proceed ahead with the aforesaid complaint, then both the parties will be at liberty to produce evidence before the Court in support of their rival cases and on appreciation of the material produced before the Labour Court, the said Court will naturally decide the question at issue on merit according to law. In that view of the matter, I am of the opinion that this is not a case wherein the Court should exercise its inherent jurisdiction under Section 482 of the said Code.

##. For the foregoing reasons, this application is dismissed. Rule is discharged. Interim relief stands vacated. However, the Labour Court will decide and dispose of the complaint before it strictly on merit without being influenced by the observation made by this Court hereinabove.

( D. P. BUCH, J. )

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